

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.380 OF 2006

Office Notes, Office
Memoranda of Coram, Court's or Judge's orders
appearances, Court's
orders or directions and
Registrar's orders

Mr.Prakash Naik for the applicants.

Mrs.Varsha Palav for Respondent no.1

Mr.S.R.Shinde, APP for the State.

Coram : R.S.Mohite,J

Date : 6.3.2006.

PC

1. Heard. Rule. By consent,
rule is made returnable forthwith.

2. This is an application
impugning an order dated 23.9.2005
passed by the Metropolitan
Magistrate, 13th Court, Dadar,
Mumbai, rejecting the application
under Section 311 of Cr.P.C. for
re-calling the witness. The said
order has been confirmed by the
Sessions Court by rejecting
Criminal Revision Application
No.391/2005 on 26.10.2005.

3. I have perused both the impugned orders. It appears that the proceedings under Section 138 of N.I.Act was going on before the Metropolitan Magistrate, 13th Court, Bhoiwada, Dadar. The evidence of the Complainant was under progress. On 16.7.2005 Advocate for the accused, after making substantial cross-examination on the said day, made an application for adjournment on the ground that he wanted to take further instructions. This application was rejected by the Metropolitan Magistrate and the cross-examination was closed. On 22.7.2005 the Advocate for the accused made an application for re-calling of the witness under Section 311 of Cr.P.C. placing on record certain aspects of the matter for which his cross-examination has remained incomplete. The said application was also rejected by the impugned order and confirmed in revision.

4. On perusal of the record, I find that this is not a case where Advocate for the accused was absent. On 16.7.2005, the Advocate conducted a substantial cross-examination. It was only when he faced difficulty relating to some documents, he applied for adjournment. In the interest of justice, the trial Court ought to have granted a short adjournment. In my view, care should be taken to see that the defence of the accused is not prejudiced by harsh passing orders. If the Advocate has some difficulty in proceeding with the cross-examination and if the Magistrate feels that the matter is required to be disposed off, a very short date can be given.

5. In the circumstances, on the last date, I have made it clear that I will be setting aside the orders subject to the grant of cost. Today, Advocate for the

respondent no.1 fairly states that she would not like to contest the matter and to consent to the impugned order being set aside. In the circumstances, by consent, application is allowed in terms of prayer clauses-(b) & (c) subject to the payment of cost of Rs.2000/- which would be deposited in the trial Court within 2 weeks and on depositing the same, the complainant will be permitted to withdraw the amount. Since there has been already delay in the matter and both parties feel that trial could be expedited, the trial is expedited and will be completed on or before 30.6.2006. Both parties agree to co-operate in the lower Court. As far as the cancellation of warrant is concerned, I am not inclined to pass any order relating to cancellation of warrant. There will be liberty to apply to the trial Court regarding such prayer and if any such application is made, the same shall be considered on its own merits. Rule made

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absolute in the aforesaid terms.

(R.S.Mohite,J)